

ANN BAVENDER\*  
ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
PAUL J. FELDMAN\*  
ERIC FISHMAN\*  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
CHARLES H. KENNEDY\*  
KATHRYN A. KLEIMAN  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
M. VERONICA PASTOR\*  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
MARVIN ROSENBERG  
KATHLEEN VICTORY\*  
HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400

TELECOPIER

(703) 812-0486

ROBERT L. HEALD  
(1956-1983)  
PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1981)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEHAN  
FRANK U. FLETCHER

OF COUNSEL  
EDWARD A. CAINE\*

WRITER'S NUMBER

(703) 812-

0415

EX PARTE OR LATE FILED

RECEIVED

JUL 15 1994

July 15, 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

EX PARTE OR LATE FILED

RE: Ex Parte Presentation - MM Docket No. 92-265

Dear Mr. Caton:

You are hereby advised that on this date the attached written ex parte presentations were made in the above-referenced proceeding to the following Commission personnel:

Chairman Hundt  
Commissioner Quello  
Commissioner Barrett  
Commissioner Chong  
Commissioner Ness  
William E. Kennard, Esquire  
Meredith Jones, Esquire  
James W. Olson, Esquire  
Diane L. Hofbauer, Esquire

The presentations follow meetings held between representatives of United States Satellite Broadcasting Company, Inc. ("USSB") and the signatories of the written presentations. The presentations submitted herewith support USSB's "Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative," submitted in MM Docket No. 92-265, on July 14, 1993. It is believed that the original of the letter from Congressman Al Swift was delivered to Chairman Hundt by Mr. Swift's office on July 8, 1994.

No. of Copies rec'd 0+1  
List: A B C D E

FLETCHER, HEALD & HILDRETH


Mr. William F. Caton  
July 15, 1994  
Page 2

An original and one copy of this letter and the attached presentations are being filed. If additional copies of this filing are required, USSB will supply them immediately upon request.

Should any question arise concerning this matter, or should any additional information be necessary or desired, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

  
Patricia A. Mahoney  
Counsel for United States  
Satellite Broadcasting  
Company, Inc.

PAM:dlr

cc: Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
William E. Kennard, Esquire  
Meredith Jones, Esquire  
James W. Olson, Esquire  
Diane L. Hofbauer, Esquire

## United States Senate

July 6, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Chairman Hundt:

I am aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. I believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS), are not covered by Section 19.

As the title of the Cable Act clearly indicates, that legislation specifically was designed to address the problems experienced by the public as a result of cable's practices.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable if the FCC determines that such contracts are in the public interest. I submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

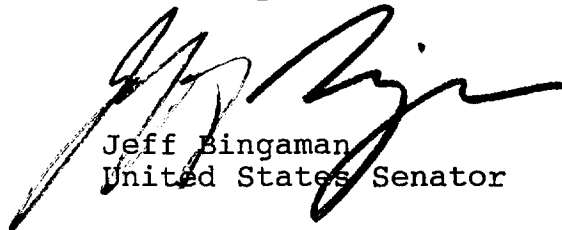
I believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and that the rules adopted by the FCC thus properly

Page 2

implement Section 19. I understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

I appreciate your consideration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Bingaman", is written over the typed name and title.

Jeff Bingaman  
United States Senator

JB/mss



**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

July 6, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Commissioner Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

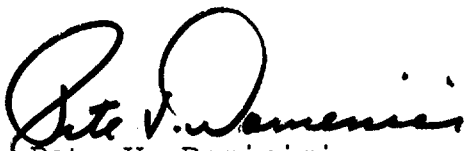
A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

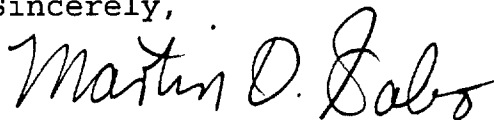
We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

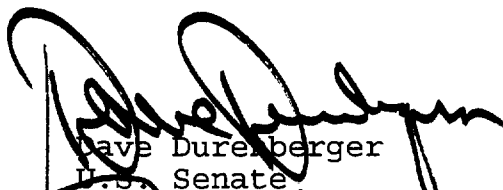


Pete V. Dominici  
U.S. Senate

Sincerely,



Martin Olav Sabo  
U.S. House of Representatives



Dave Durenberger  
U.S. Senate




Robert H. Michel  
U.S. House of  
Representatives



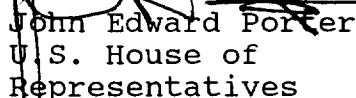
Bruce F. Vento  
U.S. House of Representatives



Bill Richardson  
U.S. House of Representatives



Jim Ramstad  
U.S. House of Representatives



John Edward Porter  
U.S. House of  
Representatives

SENT BY:

7-14-94 ; 2:49PM ;

7038120486;# 2/ 2  
JUL 13 1994

AL SWIFT  
20 DISTRICT, WASHINGTON

DISTRICT OFFICES:

100 FEDERAL BUILDING  
BELLINGHAM, WA 98225  
(206) 733-4500

201 FEDERAL BUILDING  
EVERETT, WA 98201  
(206) 252-3188

TOLL FREE  
1-800-582-1388

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4702**

1502 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4702  
(202) 225-2605

July 8, 1994

COMMITTEE ON  
ENERGY AND COMMERCE

CHAIRMAN,  
SUBCOMMITTEE ON TRANSPORTATION AND  
HAZARDOUS MATERIALS

SUBCOMMITTEE ON ENERGY AND POWER

COMMITTEE ON  
HOUSE ADMINISTRATION

CHAIRMAN,  
SUBCOMMITTEE ON ELECTIONS  
SUBCOMMITTEE ON ACCOUNTS

The Honorable Reed Hunt  
Chairman, Federal Communications Commission  
1919 M Street NW  
Washington, D.C. 20554

Dear Chairman Hunt:

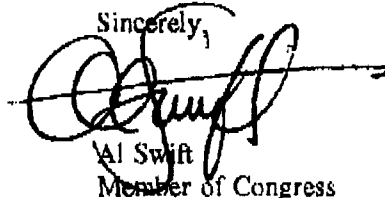
I am writing you concerning the issue of program exclusivity as it pertains to Direct Broadcast Satellite (DBS) services. I was an active proponent of the purposes of the 1992 Cable Act, and in particular, the goal of creating viable and robust DBS services to offer competition to existing cable monopolies.

As you know --and as the Act's title clearly indicates--the legislation was specifically designed to address the problems suffered by the public as a result of monopolistic practices by certain large cable companies. Competition by DBS was intended to be part of the public's solution, never part of the problem. Therefore it is my belief that a search of the Act and the legislative history will confirm that only program contracts involving cable operators are intended to fall within the province of the 1992 Cable Act.

In that regard, I want to state my support for the Commission's conclusion in its "First Report and Order" in MM Docket No. 92.265. I believe the Commission properly construed the exclusivity provisions of Section 19 as applicable to cable operators only. And it is my understanding that the Department of Justice, and the attorneys general of 45 states also agree that there is no bar in the Cable Act of 1992 to exclusive contracts by DBS providers and programmers.

Thank you for your consideration of my views on this matter.

Sincerely,



Al Swift  
Member of Congress

AS/lbk